

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CARL E BARKER  
3624 RAVENWOOD CR  
WATERLOO IA 50702**

**MATCO RESTAURANTS INC  
220 W RIDGEWAY  
WATERLOO IA 50701**

**Appeal Number: 05A-UI-06679-CT  
OC: 06/05/05 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Carl Barker filed an appeal from a representative's decision dated June 24, 2005, reference 01, which denied benefits based on his separation from Matco Restaurants, Inc. After due notice was issued, a hearing was held by telephone on July 14, 2005. Mr. Barker participated personally. The employer participated by Alan King, Area Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Barker was employed by Matco Restaurants, Inc., doing

business as Village Inn, from March 24, 2004 until May 8, 2005. He worked full time as a cook. He was discharged for using profanity.

On the morning of May 8, Mr. Barker was having a dispute with a server concerning an error on an order. When he was approached by the manager, Mr. Barker raised his voice and said "fuck this shit, I'm tired of this fucking place." His voice was loud enough that it could be heard by patrons in the dining room. As a party was leaving, they notified management that they would not be returning because of the new words their five-year-old son had learned at the restaurant. Their comment was in reference to the profanity overheard by their son. As a result of this incident, Mr. Barker was discharged.

The employer has a written policy prohibiting the use of profanity. A certain amount of profanity is tolerated in the kitchen area. The above matter was the sole reason for Mr. Barker's discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Barker was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Barker was discharged for using profanity on the job. Although the employer tolerates some profanity in the kitchen area, Mr. Barker's profanity on May 8 was so loud it could be overheard by customers in the dining room. Mr. Barker knew or should have known that such conduct was contrary to the employer's standards. The fact that he felt management was more responsive to complaints from servers than from cooks was not justification for his conduct.

Mr. Barker's conduct was also contrary to the employer's interests as it resulted in at least one customer deciding not to return to the restaurant. As a family restaurant, Village Inn had the right to expect that employees would not use profanity to the extent it could be heard by customers. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

#### DECISION:

The representative's decision dated June 24, 2005, reference 01, is hereby affirmed. Mr. Barker was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs